

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

RICHARD SHARP, et al.,

Respondents,

v.

KANSAS CITY POWER & LIGHT COMPANY and KCP&L GREATER MISSOURI
OPERATIONS COMPANY,

Appellants.

DOCKET NUMBER WD77444

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: January 13, 2015

APPEAL FROM

The Circuit Court of Buchanan County, Missouri
The Honorable Weldon C. Judah, Judge

JUDGES

Division Three: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

RICHARD SHARP, et al.,

Respondents,

v.

**KANSAS CITY POWER & LIGHT
COMPANY and KCP&L GREATER
MISSOURI OPERATIONS COMPANY,**

Appellants.

OPINION FILED:

January 13, 2015

WD77444

Buchanan County

Before Division Three Judges:

Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively “KCP&L”) appeal the trial court’s denial of their motion to stay litigation and compel arbitration, filed in response to a putative class action filed by Respondents, a group of consumers, which raised claims of breach of contract, negligence, violation of the Missouri Merchandising Practices Act, and fraud/misrepresentation, surrounding the consumers’ participation with KCP&L in the Solar Energy Rebate Program. KCP&L argues that, pursuant to a dispute resolution provision found within a net-metering agreement upon which the consumers’ claims are allegedly based, the consumers were required to arbitrate their disputes before the Missouri Public Service Commission (PSC) rather than seeking relief in a court of law. But because the dispute resolution provision does not constitute an arbitration agreement, the trial court committed no error in denying KCP&L’s motion to stay proceedings and compel arbitration.

AFFIRMED.

Division Three holds:

1. A motion to compel arbitration requires the court to consider three factors: (1) whether a valid arbitration agreement exists; (2) whether the dispute falls within the scope of the

agreement; and (3) whether applicable contract principles subject the agreement to revocation.

2. An arbitration agreement need not use the word “arbitrate” to constitute an arbitration agreement. Not all dispute resolution provisions, however, constitute arbitration agreements.
3. Although the PSC has authority to act as arbitrators under section 386.230, that authority is limited to controversies only between public utilities or between public utilities and persons, and only where “all the parties to such controversy agree in writing to submit such controversy to the commission as arbitrators.”
4. The written agreement required by section 386.230 must be a post-dispute written agreement; a dispute resolution agreement set forth in a pre-dispute contract, alone, is insufficient.

Opinion by: Karen King Mitchell, Presiding Judge

January 13, 2015

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